

# Exhibit “DD” to Amended Verified Petition

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November 19, 1993

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TOWN OF MONTGOMERY  
PLANNING BOARD

Mr. Alexander F. Ciesluk, Jr.  
Deputy Regional Permit Administrator  
Region 3  
New York State Department of Environmental Conservation  
21 S. Putt Corners Road  
New Paltz, New York 12561

Re: Application of Mehlon Trucking, Inc. for Mining Permit  
DEC Application No. 3-3342-22-2-0

Dear Mr. Ciesluk:

I am writing this letter on behalf of the above applicant to request, pursuant to 6 NYCRR 617.6(f), that there be a re-designation of lead agency in this matter.

This application was originally submitted to the Department in 1988. The Department's review of the application has been held in abeyance pending resolution of the SEQRA process. In January of 1989 the Town of Montgomery Planning Board indicated its intent to serve as lead agency for SEQRA review of the project. As far as I have been able to determine, no determination of significance was ever made.

Apparently the Town's assertion of involved agency status (and hence its eligibility to serve as lead agency) was predicated upon Section 130-40-30.30 of the Town's Zoning Ordinance (copy attached), which requires a special permit for mining. However, that Section of the Town Zoning Ordinance was preempted by state law as a result of Chapter 166 of the Laws of 1991, which amended ECL 23-2703 to restrict the kinds of performance standards that a town may impose upon a mine through the special use permit process. Under ECL 23-2703 as revised, the only types of conditions which a town may regulate by special use permit are ingress and egress to town roads, designating routes for mineral transport vehicles on town roads, and enforcing requirements and conditions as

*Copy to Rich, Ed, Bill*

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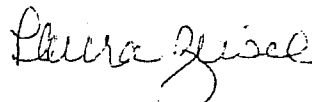
specified in a DEC permit regarding setbacks from property boundaries, rights-of-way, berms, dust control, and hours of operation. In addition, a town may enforce the reclamation requirements contained in a state mining permit.

Since the Montgomery Zoning Ordinance is inconsistent with what is now allowed, it is unenforceable, and the Town, therefore, does not have the jurisdiction which originally enabled to seek lead agency status. It is for that reason that my client seeks redesignation of lead agency status; the SEQRA regulations anticipate that, once a municipality no longer has jurisdiction over a project, lead agency should change. See 6 NYCRR 617.6(f)(1)(ii).

My client is anxious to see his permit application move forward. When the application was last discussed with the Town of Montgomery, their primary concerns related to insuring appropriate road surface for that section of the Town of Montgomery town highway which crosses the New York City Aqueduct. My client and his engineers have conferred with New York City's engineers, and have reached agreement on the type of road surface that would be acceptable. I would be happy to submit more details on this issue, and/or on any other issues which the DEC feels should be addressed. If you believe it is appropriate, a revised EAF can be submitted. In any event, however, my client would like this application to move forward.

I would appreciate your confirming the process which will be followed from here. If you have any questions, please do not hesitate to contact me.

Yours very truly,



Laura Zeisel

LZ/jjc  
Enclosure

cc: ✓ Chairman, Town of Montgomery Planning Board - w/enc.  
Mehlon Trucking, Inc. - w/enc.

**130-40-30.29 PUBLIC PASSENGER TRANSPORTATION STATION  
OR TERMINAL:**

All loading or unloading locations for public transportation vehicles shall be offstreet.

**130-40-30.30 QUARRY: MINING, LOADING, HAULING AND/OR  
PROCESSING OF SAND, GRAVEL, SHALE, FILL  
OR TOPSOIL:**

(a) The proposal shall have a particular time limit for completion of either the entire operation or of each stage of the entire operation.

(b) The proposal shall include a specific method for rehabilitating the site or portions of the site related to each stage of the operation.

(c) The proposal shall indicate how adjacent properties and the public will be protected from the hazards of the operation, both in terms of on-site activity and off-site traffic generated by that activity.

**130-40-30.31 REPAIR GARAGE:**

See FILLING STATION